

AMENDED IN ASSEMBLY JULY 6, 2009

AMENDED IN ASSEMBLY MAY 14, 2009

AMENDED IN ASSEMBLY MAY 4, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 1318

Introduced by Assembly Member V. Manuel Perez
(Principal coauthors: Senators Ducheny and Benoit)
(Coauthor: Assembly Member Nestande)

February 27, 2009

~~An act to add and repeal Section 40453 of the Health and Safety Code, relating to air pollution, and declaring the urgency thereof, to take effect immediately. An act to add and repeal Sections 40453 and 40453.1 of the Health and Safety Code, and to amend Section 21080 of the Public Resources Code, relating to the South Coast Air Quality Management District, and declaring the urgency thereof, to take effect immediately.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 1318, as amended, V. Manuel Perez. South Coast Air Quality Management District: emission reduction credits for electrical generating facilities.: *California Environmental Quality Act.*

(1) Under existing law, every air pollution control district or air quality management district governing board, except as specified, is required to establish by regulation a system by which all reductions in the emission of air contaminants that are to be used to offset certain future increases in the emission of air contaminants are required to be banked prior to use to offset future increases in emissions, as provided.

The California Environmental Quality Act (CEQA) requires a lead agency, as defined, to prepare, or cause to be prepared, and certify the completion of, an environmental impact report (EIR) on a project that it proposes to carry out or approve that may have a significant effect on the environment or to adopt a negative declaration if it finds that the project will not have that effect. CEQA also requires a lead agency to prepare a mitigated negative declaration for a project that may have a significant effect on the environment if revisions in the project would avoid or mitigate that effect and there is no substantial evidence that the project, as revised, would have a significant effect on the environment. CEQA exempts certain specified projects from its requirements.

This bill would require the executive officer of the South Coast Air Quality Management District, upon making a specified finding, to transfer a specified quantity of emission reduction credits for certain pollutants from the south coast district's internal emission credit accounts to eligible electrical generating facilities, as described, ~~thereby imposing a state-mandated local program~~. These provisions would be repealed on January 1, 2013.

This bill would require the executive officer of the South Coast Air Quality Management District, upon a finding that an essential public service facility has complied with applicable district rules, to credit and transfer as many internal emission credits as are needed to grant a permit to the essential public service facility. These provisions would be repealed on January 1, 2013.

By imposing these duties on the South Coast Air Quality Management District, the bill would impose a state-mandated local program.

The bill would state that the holdings of the superior court in the case of Natural Resources Defense Council v. South Coast Air Quality Management District are abrogated to the extent to which they are inconsistent with these provisions. The bill would also state that no provision of the act will be given effect if any provision is held invalid.

The bill would exempt from the California Environmental Quality Act actions of the district undertaken pursuant to the bill.

The bill would state the findings and declarations of the Legislature concerning the need for special legislation.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

(3) The bill would declare that it is to take effect immediately as an urgency statute.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes.

State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares all of the
2 following:

3 (a) Sufficient rotating electrical generation capacity is required
4 within the Los Angeles Basin Local Reliability Area to ensure
5 stable operation of the power grid.

6 (b) Energy efficiency and renewable resources, which are
7 primarily located outside of the Los Angeles Basin Local
8 Reliability Area, may not be sufficient to satisfy the in-basin
9 rotating electrical generation capacity need.

10 (c) In October 2005, the Public Utilities Commission and the
11 State Energy Resources Conservation and Development
12 Commission (commission) adopted the Energy Action Plan II,
13 which establishes a policy that the state will rely on clean and
14 efficient fossil fuel-fired generation to the extent energy efficiency
15 and renewable resources are unsuitable.

16 (d) The Energy Action Plan II establishes a policy that the state
17 will encourage the development of cost-effective, highly efficient,
18 and environmentally sound supply resources to provide reliability
19 and consistency with the state's energy priorities.

20 (e) Executive Order S-14-08, signed by the Governor on
21 November 17, 2008, calls for a new, more aggressive renewable
22 energy target, increasing the current goal of obtaining 20 percent
23 of the energy used by electrical corporations from clean, renewable
24 sources by the year 2010 to 33 percent by the year 2020.

25 (f) New electrical generating capacity in the Los Angeles Basin
26 Local Reliability Area is required to meet best available control
27 technology (BACT) standards and is required to fully offset any
28 remaining emissions of nonattainment pollutants, including sulfur
29 oxides and particulate matter with emission credits.

(g) Emission credits available in the air basins regulated by the South Coast Air Quality Management District may be insufficient to allow new electrical generating capacity to be constructed.

(h) The South Coast Air Quality Management District maintains internal emission credit accounts that it uses to permit, among other things, ~~small and~~ essential public services.

(i) *The South Coast Air Quality Management District has adopted Rule 1302(m) which defines an “essential public service” to include sewage treatment facilities, prisons, police facilities, fire fighting facilities, schools, hospitals, construction and operation of a landfill gas control or processing facility, water delivery operations, and public transit.*

SEC. 2. Section 40453 is added to the Health and Safety Code, to read:

40453. (a) The executive officer *of the south coast district*, upon finding that the eligible electrical generating facility proposed for certification by the State Energy Resources Conservation and Development Commission meets the requirements of the applicable new source review rule and all other applicable district regulations that must be met under Section 1744.5 of Title 20 of the California Code of Regulations, shall credit to the south coast district’s internal emission credit accounts and transfer from the south coast district’s internal emission credit accounts to eligible electrical generating facilities emission credits up to the following aggregate amounts:

(1) Sulfur oxides (SO_x) in the amount of 0.1 tons per day.

(2) ~~Fine particulate~~ *Particulate* matter (PM10) in the amount of 0.6 tons per day.

(b) The south coast district may rely on the south coast district’s Rule 1315, as adopted on August 3, 2007, *or as amended as required by the United States Environmental Protection Agency*, to credit emission credits to its internal emission credit accounts to carry out the obligations of subdivision (a).

(c) The emission reduction credits in subdivision (a) shall satisfy all state and south coast district requirements related to the provision of credits or offsets for new electrical generating facilities.

(d) In order to be eligible for emission reduction credits pursuant to this section, an electrical generating facility shall meet all of the following requirements:

1 (1) Be subject to the permitting jurisdiction of the State Energy
2 Resources Conservation and Development Commission.

3 (2) Have a purchase agreement, executed on or before December
4 31, 2008, to provide electricity to a public utility, as defined in
5 Section 216 of the Public Utilities Code, subject to regulation by
6 the Public Utilities Commission, for use within the Los Angeles
7 Basin Local Reliability Area.

8 (3) Be under the jurisdiction of the south coast district, but not
9 within the South Coast Air Basin.

10 (e) The executive officer shall not transfer emission reduction
11 credits pursuant to this section until the receipt of payment of the
12 mitigation fees set forth in the south coast district's Rule 1309.1,
13 as adopted on August 3, 2007. The mitigation fees shall only be
14 used for emission reduction purposes. The south coast district shall
15 ensure that at least 30 percent of the fees are used for emission
16 reductions in areas within close proximity to the electrical
17 generating facility and at least 30 percent are used for emission
18 reductions in areas designated as "Environmental Justice Areas"
19 in Rule 1309.1.

20 (f) The executive officer's authority to transfer emission
21 reduction credits pursuant to this section shall terminate when the
22 executive officer has transferred emission reduction credits in
23 amounts that are equal to the aggregate amounts set forth in
24 subdivision (a).

25 (g) This section shall be implemented in a manner consistent
26 with federal law, including the Clean Air Act (42 U.S.C. Sec. 7401
27 et seq.).

28 (h) This section shall remain in effect only until January 1, 2013,
29 and as of that date is repealed, unless a later enacted statute, that
30 is enacted before January 1, 2013, deletes or extends that date.

31 *SEC. 3. Section 40453.1 is added to the Health and Safety*
32 *Code, to read:*

33 *40453.1. (a) The executive officer of the south coast district,*
34 *upon finding that an essential public service facility, as defined in*
35 *subdivision (m) of south coast district Rule 1302, has complied*
36 *with all applicable district rules including paragraph (3) of*
37 *subdivision (b) of Rule 1309.1, as adopted on August 3, 2007, shall*
38 *credit and transfer to the south coast district's internal emission*
39 *credit accounts and transfer from the south coast district's internal*

1 *emission accounts those emission credits that are needed to grant*
2 *a permit to the essential public service facility.*

3 *(b) To carry out subdivision (a), the south coast district may*
4 *rely on the south coast district's Rule 1315, as adopted August 3,*
5 *2007, or as amended as required by the United States*
6 *Environmental Protection Agency, to credit emission credits to its*
7 *internal emission credit accounts.*

8 *(c) This section shall remain in effect only until January 1, 2013,*
9 *and as of that date is repealed, unless a later enacted statute, that*
10 *is enacted before January 1, 2013, deletes or extends that date.*

11 *SEC. 4. Section 21080 of the Public Resources Code is*
12 *amended to read:*

13 21080. (a) Except as otherwise provided in this division, this
14 division shall apply to discretionary projects proposed to be carried
15 out or approved by public agencies, including, but not limited to,
16 the enactment and amendment of zoning ordinances, the issuance
17 of zoning variances, the issuance of conditional use permits, and
18 the approval of tentative subdivision maps unless the project is
19 exempt from this division.

20 (b) This division does not apply to any of the following
21 activities:

22 (1) Ministerial projects proposed to be carried out or approved
23 by public agencies.

24 (2) Emergency repairs to public service facilities necessary to
25 maintain service.

26 (3) Projects undertaken, carried out, or approved by a public
27 agency to maintain, repair, restore, demolish, or replace property
28 or facilities damaged or destroyed as a result of a disaster in a
29 disaster-stricken area in which a state of emergency has been
30 proclaimed by the Governor pursuant to Chapter 7 (commencing
31 with Section 8550) of Division 1 of Title 2 of the Government
32 Code.

33 (4) Specific actions necessary to prevent or mitigate an
34 emergency.

35 (5) Projects which a public agency rejects or disapproves.

36 (6) Actions undertaken by a public agency relating to any
37 thermal powerplant site or facility, including the expenditure,
38 obligation, or encumbrance of funds by a public agency for
39 planning, engineering, or design purposes, or for the conditional
40 sale or purchase of equipment, fuel, water (except groundwater),

1 steam, or power for a thermal powerplant, if the powerplant site
2 and related facility will be the subject of an environmental impact
3 report, negative declaration, or other document, prepared pursuant
4 to a regulatory program certified pursuant to Section 21080.5,
5 which will be prepared by the State Energy Resources Conservation
6 and Development Commission, by the Public Utilities Commission,
7 or by the city or county in which the powerplant and related facility
8 would be located if the environmental impact report, negative
9 declaration, or document includes the environmental impact, if
10 any, of the action described in this paragraph.

11 (7) Activities or approvals necessary to the bidding for, hosting
12 or staging of, and funding or carrying out of, an Olympic games
13 under the authority of the International Olympic Committee, except
14 for the construction of facilities necessary for the Olympic games.

15 (8) The establishment, modification, structuring, restructuring,
16 or approval of rates, tolls, fares, or other charges by public agencies
17 which the public agency finds are for the purpose of (A) meeting
18 operating expenses, including employee wage rates and fringe
19 benefits, (B) purchasing or leasing supplies, equipment, or
20 materials, (C) meeting financial reserve needs and requirements,
21 (D) obtaining funds for capital projects necessary to maintain
22 service within existing service areas, or (E) obtaining funds
23 necessary to maintain those intracity transfers as are authorized
24 by city charter. The public agency shall incorporate written findings
25 in the record of any proceeding in which an exemption under this
26 paragraph is claimed setting forth with specificity the basis for the
27 claim of exemption.

28 (9) All classes of projects designated pursuant to Section 21084.

29 (10) A project for the institution or increase of passenger or
30 commuter services on rail or highway rights-of-way already in
31 use, including modernization of existing stations and parking
32 facilities.

33 (11) A project for the institution or increase of passenger or
34 commuter service on high-occupancy vehicle lanes already in use,
35 including the modernization of existing stations and parking
36 facilities.

37 (12) Facility extensions not to exceed four miles in length which
38 are required for the transfer of passengers from or to exclusive
39 public mass transit guideway or busway public transit services.

1 (13) A project for the development of a regional transportation
2 improvement program, the state transportation improvement
3 program, or a congestion management program prepared pursuant
4 to Section 65089 of the Government Code.

5 (14) Any project or portion thereof located in another state
6 which will be subject to environmental impact review pursuant to
7 the National Environmental Policy Act of 1969 (42 U.S.C. Sec.
8 4321 et seq.) or similar state laws of that state. Any emissions or
9 discharges that would have a significant effect on the environment
10 in this state are subject to this division.

11 (15) Projects undertaken by a local agency to implement a rule
12 or regulation imposed by a state agency, board, or commission
13 under a certified regulatory program pursuant to Section 21080.5.
14 Any site-specific effect of the project which was not analyzed as
15 a significant effect on the environment in the plan or other written
16 documentation required by Section 21080.5 is subject to this
17 division.

18 *(16) Actions undertaken by the South Coast Air Quality*
19 *Management District pursuant to Sections 40453 and 40453.1 of*
20 *the Health and Safety Code.*

21 (c) If a lead agency determines that a proposed project, not
22 otherwise exempt from this division, would not have a significant
23 effect on the environment, the lead agency shall adopt a negative
24 declaration to that effect. The negative declaration shall be prepared
25 for the proposed project in either of the following circumstances:

26 (1) There is no substantial evidence, in light of the whole record
27 before the lead agency, that the project may have a significant
28 effect on the environment.

29 (2) An initial study identifies potentially significant effects on
30 the environment, but (A) revisions in the project plans or proposals
31 made by, or agreed to by, the applicant before the proposed
32 negative declaration and initial study are released for public review
33 would avoid the effects or mitigate the effects to a point where
34 clearly no significant effect on the environment would occur, and
35 (B) there is no substantial evidence, in light of the whole record
36 before the lead agency, that the project, as revised, may have a
37 significant effect on the environment.

38 (d) If there is substantial evidence, in light of the whole record
39 before the lead agency, that the project may have a significant

1 effect on the environment, an environmental impact report shall
2 be prepared.

3 (e) (1) For the purposes of this section and this division,
4 substantial evidence includes fact, a reasonable assumption
5 predicated upon fact, or expert opinion supported by fact.

6 (2) Substantial evidence is not argument, speculation,
7 unsubstantiated opinion or narrative, evidence that is clearly
8 inaccurate or erroneous, or evidence of social or economic impacts
9 that do not contribute to, or are not caused by, physical impacts
10 on the environment.

11 (f) As a result of the public review process for a mitigated
12 negative declaration, including administrative decisions and public
13 hearings, the lead agency may conclude that certain mitigation
14 measures identified pursuant to paragraph (2) of subdivision (c)
15 are infeasible or otherwise undesirable. In those circumstances,
16 the lead agency, prior to approving the project, may delete those
17 mitigation measures and substitute for them other mitigation
18 measures that the lead agency finds, after holding a public hearing
19 on the matter, are equivalent or more effective in mitigating
20 significant effects on the environment to a less than significant
21 level and that do not cause any potentially significant effect on the
22 environment. If those new mitigation measures are made conditions
23 of project approval or are otherwise made part of the project
24 approval, the deletion of the former measures and the substitution
25 of the new mitigation measures shall not constitute an action or
26 circumstance requiring recirculation of the mitigated negative
27 declaration.

28 (g) Nothing in this section shall preclude a project applicant or
29 any other person from challenging, in an administrative or judicial
30 proceeding, the legality of a condition of project approval imposed
31 by the lead agency. If, however, any condition of project approval
32 set aside by either an administrative body or court was necessary
33 to avoid or lessen the likelihood of the occurrence of a significant
34 effect on the environment, the lead agency's approval of the
35 negative declaration and project shall be invalid and a new
36 environmental review process shall be conducted before the project
37 can be reapproved, unless the lead agency substitutes a new
38 condition that the lead agency finds, after holding a public hearing
39 on the matter, is equivalent to, or more effective in, lessening or

1 avoiding significant effects on the environment and that does not
2 cause any potentially significant effect on the environment.

3 *SEC. 5. The holdings of the Superior Court in Natural*
4 *Resources Defense Council v. South Coast Air Quality*
5 *Management District (2007 Superior Court of Los Angeles County*
6 *Case No. BS 110792) are hereby abrogated to the extent to which*
7 *they are inconsistent with the provisions of this act.*

8 *SEC. 6. The provisions of this act are not severable. If any*
9 *provision of this act is held invalid, no provision can be given*
10 *effect.*

11 ~~SEC. 3.~~

12 *SEC. 7.* Due to unique circumstances concerning the South
13 Coast Air Quality Management District, the Legislature finds and
14 declares that a general statute cannot be made applicable within
15 the meaning of Section 16 of Article IV of the California
16 Constitution.

17 ~~SEC. 4.~~

18 *SEC. 8.* If the Commission on State Mandates determines that
19 this act contains costs mandated by the state, reimbursement to
20 local agencies and school districts for those costs shall be made
21 pursuant to Part 7 (commencing with Section 17500) of Division
22 4 of Title 2 of the Government Code.

23 ~~SEC. 5.~~

24 *SEC. 9.* This act is an urgency statute necessary for the
25 immediate preservation of the public peace, health, or safety within
26 the meaning of Article IV of the Constitution and shall go into
27 immediate effect. The facts constituting the necessity are:

28 In order to *maintain essential public services and help create*
29 *sufficient electrical generating capacity in southern California to*
30 *meet the current and future needs of the region and to prevent*
31 *rolling blackouts during peak demand periods, thereby preserving*
32 *the public peace, health, and safety, and to provide the necessary*
33 *infrastructure to support increased reliance on renewable sources*
34 *of energy, it is necessary that this statute take effect immediately.*